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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-82477; File No. SR-CboeBYX-2017-005]

Self-Regulatory Organizations; Cboe BYX Exchange, Inc.; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Related to Transaction Fees

January 9, 2018

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (the “Act”),¹ and Rule 19b-4 thereunder,² notice is hereby given that on December 27, 2017, Cboe BYX Exchange, Inc. (the “Exchange” or “BYX”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change as described in Items I, II and III below, which Items have been prepared by the Exchange. The Exchange has designated the proposed rule change as one establishing or changing a member due, fee, or other charge imposed by the Exchange under Section 19(b)(3)(A)(ii) of the Act³ and Rule 19b-4(f)(2) thereunder,⁴ which renders the proposed rule change effective upon filing with the Commission. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

The Exchange filed a proposal to amend the fee schedule applicable to Members⁵ and

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

⁴ 17 CFR 240.19b-4(f)(2).

⁵ The term “Member” is defined as “any registered broker or dealer that has been admitted to membership in the Exchange.” See Exchange Rule 1.5(n).

non-Members of the Exchange pursuant to BYX Rules 15.1(a) and (c).

The text of the proposed rule change is available at the Exchange's website at www.markets.cboe.com, at the principal office of the Exchange, and at the Commission's Public Reference Room.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Exchange has prepared summaries, set forth in Sections A, B, and C below, of the most significant parts of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

As further described below, the Exchange proposes to amend its fee schedule to: (i) modify its standard rebate to remove liquidity yielding fee codes BB,⁶ N,⁷ and W;⁸ (ii) modify its standard fee to add liquidity yielding fee codes B,⁹ V¹⁰ and Y;¹¹ and (iii) adopt a new tier under footnote 1, Add/Remove Volume Tiers.

⁶ Fee code BB is appended to orders that remove liquidity from BYX (Tape B). See the Exchange's fee schedule available at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/.

⁷ Fee code N is appended to orders that remove liquidity from BYX (Tape C). Id.

⁸ Fee code W is appended to orders that remove liquidity from BYX (Tape A). Id.

⁹ Fee code B is appended to displayed orders that add liquidity to BYX (Tape B). Id.

¹⁰ Fee code V is appended to displayed orders that add liquidity to BYX (Tape A). Id.

¹¹ Fee code Y is appended to displayed orders that add liquidity to BYX (Tape C). Id.

Standard Rebates to Remove Liquidity

The Exchange currently provides a standard rebate of \$0.0008 per share for orders that remove liquidity from the Exchange in securities priced at or above \$1.00. The Exchange appends fee codes W, BB and N for orders removing liquidity in Tape A, Tape B, and Tape C securities, respectively. The Exchange proposes to reduce the standard rebate provided for orders yielding these fee codes to a rebate of \$0.0005 per share. In connection with this change, the Exchange proposes to modify the Standard Rates chart contained on the fee schedule to reflect the new standard rebate of \$0.0005 per share to remove liquidity.

Standard Fee to Add Liquidity

The Exchange currently charges a standard fee of \$0.0018 per share for orders that add liquidity to the Exchange in securities priced at or above \$1.00. The Exchange appends fee codes V, B, and Y for orders adding liquidity in Tape A, Tape B, and Tape C securities, respectively. The Exchange proposes to increase the standard fee charged for orders yielding these fee codes to a fee of \$0.0019 per share. In connection with this change, the Exchange proposes to modify the Standard Rates chart contained on the fee schedule to reflect the new standard fee of \$0.0019 per share to add liquidity.

New Remove Volume Tier

The Exchange currently offers six [sic] tiers under footnote 1 that offer reduced fees for displayed orders that add liquidity yielding fee codes B, V and Y, and an enhanced rebate for orders that remove liquidity yielding fee codes BB, N and W, as described above. The Exchange proposes to add a new tier under footnote 1, to be known as Tier 9, under which a Member would receive an enhanced rebate of \$0.0017 per share on orders that yield fee codes BB, N and

W, where a Member has: (i) a Step-Up Remove TCV¹² from December 2017 equal to or greater than 0.075%; and (ii) an ADAV¹³ equal to or greater than 0.10% of the TCV.¹⁴

Implementation Date.

The Exchange proposes to implement the above changes to its fee schedule on January 2, 2018.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with the objectives of Section 6 of the Act,¹⁵ in general, and furthers the objectives of Section 6(b)(4),¹⁶ in particular, as it is designed to provide for the equitable allocation of reasonable dues, fees and other charges among its Members and other persons using its facilities.

The Exchange believes that proposed changes to fee codes BB, N, and W represent an equitable allocation of reasonable dues, fees, and other charges because the Exchange's standard rebate for removing liquidity continues to be higher than that provided by other exchanges. For example, Nasdaq BX, Inc. ("Nasdaq BX") provides a standard rebate of \$0.0001 per share for

¹² "Step-Up Remove TCV" means remove ADV as a percentage of TCV in the relevant baseline month subtracted from current remove ADV as a percentage of TCV. See the Exchange's fee schedule available at http://markets.cboe.com/us/equities/membership/fee_schedule/byx/.

¹³ "ADAV" means average daily volume calculated as the number of shares added per day and "ADV" means average daily volume calculated as the number of shares added or removed, combined, per day. ADAV and ADV are calculated on a monthly basis. Id.

¹⁴ "TCV" means total consolidated volume calculated as the volume reported by all exchanges and trade reporting facilities to a consolidated transaction reporting plan for the month for which the fees apply. Id.

¹⁵ 15 U.S.C. 78f.

¹⁶ 15 U.S.C. 78f(b)(4).

orders that remove liquidity.¹⁷ The Exchange further believes that the standard rebate for fee codes BB, N, and W remains equitably allocated and not unreasonably discriminatory because such rebate is provided to all Members unless they qualify for enhanced rebates based on other factors.

The Exchange believes that proposed changes to fee codes B, V, and Y represent an equitable allocation of reasonable dues, fees, and other charges because the Exchange's standard fee for adding liquidity continues to be lower than that provided by other exchanges. For example, Nasdaq BX charges a standard fee of \$0.0020 per share for orders that remove liquidity.¹⁸ The Exchange further believes that the standard fee for fee codes B, V, and Y remains equitably allocated and not unreasonably discriminatory because such fee is provided to all Members unless they qualify for reduced fees based on other factors.

The Exchange believes that the proposed Tier 9 to be added to footnote 1 is equitably allocated and reasonable because it will reward a Member's growth pattern on the Exchange and such increased volume will allow the Exchange to continue to provide and potentially expand its incentive programs. The Exchange further believes that the proposed tier is reasonable, fair and equitable because the liquidity from the proposed change would benefit all investors by deepening the Exchange's liquidity pool, offering additional flexibility for all investors to enjoy cost savings, supporting the quality of price discovery, promoting market transparency and improving investor protection. The Exchange also believes the proposed rebate of \$0.0017 per share for Tier 9 is reasonable in that it is equivalent to the top tier rebate to remove liquidity

¹⁷ See the Nasdaq BX fee schedule available at http://www.nasdaqtrader.com/Trader.aspx?id=bx_pricing.

¹⁸ Id.

provided by Nasdaq BX.¹⁹ The proposed pricing structure is also not unfairly discriminatory in that it is available to all Members.

In addition, volume-based fees such as that proposed herein have been widely adopted by exchanges and are equitable because they are open to all Members on an equal basis and provide additional benefits or discounts that are reasonably related to: (i) the value to an exchange's market quality; (ii) associated higher levels of market activity, such as higher levels of liquidity provision and/or growth patterns; and (iii) the introduction of higher volumes of orders into the price and volume discovery processes. The Exchange believes that the proposed tier is a reasonable, fair and equitable, and not an unfairly discriminatory allocation of fees and rebates, because it will provide Members with an additional incentive to reach certain thresholds on the Exchange.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. The Exchange does not believe that this change represents a significant departure from previous pricing offered by the Exchange or from pricing offered by the Exchange's competitors. The proposed rates would apply uniformly to all Members, and Members may opt to disfavor the Exchange's pricing if they believe that alternatives offer them better value. Accordingly, the Exchange does not believe that the proposed changes will impair the ability of Members or competing venues to maintain their competitive standing in the financial markets. Further, excessive fees would serve to impair an exchange's ability to compete for order flow and members rather than burdening competition. The Exchange believes that its proposal would not

¹⁹ Id.

burden intramarket competition because the proposed rate would apply uniformly to all Members.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has not solicited, and does not intend to solicit, comments on this proposed rule change. The Exchange has not received any unsolicited written comments from Members or other interested parties.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A) of the Act²⁰ and paragraph (f) of Rule 19b-4 thereunder.²¹ At any time within 60 days of the filing of the proposed rule change, the Commission summarily may temporarily suspend such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act.

Comments may be submitted by any of the following methods:

Electronic Comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>);
- or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CboeBYX-2017-005 on the subject line.

²⁰ 15 U.S.C. 78s(b)(3)(A).

²¹ 17 CFR 240.19b-4(f).

Paper Comments:

- Send paper comments in triplicate to Brent J. Fields, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CboeBYX-2017-005. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-CboeBYX-2017-005 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²²

Eduardo A. Aleman,
Assistant Secretary.

²² 17 CFR 200.30-3(a)(12).

